

February 15th, 2022

Senator William C. Smith, Jr.
Chairman, Senate Committee on Judicial Proceedings
2 East
Miller Senate Office Building
Annapolis, Maryland 21401

Re: Official Testimony Opposing **S.B. 550**

Dear Mr. Chairman and Members of the Committee,

My name is Joseph Kohm III, I am an attorney and the Public Policy Director for Family Policy Alliance. Family Policy Alliance advocates for policies that strengthen families and religious freedom in state capitols across the country, and federally. We host an alliance of more than 40 state-based organizations, to achieve a vision of a nation where families thrive, life is cherished, and religious freedom flourishes. Thank you for the opportunity to share with you how S.B. 550 will endanger women and violate the First Amendment rights of Maryland correctional facility employees.

First, S.B. 550 endangers women because Section 9-620(C) of the bill allows biologically male inmates to simply choose which sex they prefer to be housed with while incarcerated. Well-documented cases prove that allowing men, even men who “identify” as female, to be housed with biologically female inmates places those women in serious, increased danger of sexual assault and jeopardizes their mental health.¹² This indifference towards the safety of female inmates reflects an embrace of radical gender theory that erroneously asserts sex and gender are interchangeable and that a person’s status as a man or woman is entirely dependent upon their subjective feelings and experiences. This is a

¹ Caroline Downey, [Biological Males Have Repeatedly Sexually Assaulted Females in Washington Women’s Prison, Former Inmate Claims](https://www.nationalreview.com/news/biological-males-have-repeatedly-sexually-assaulted-females-in-washington-womens-prison-former-inmate-claims/), National Review (Dec. 29, 2021, 6:30 AM), <https://www.nationalreview.com/news/biological-males-have-repeatedly-sexually-assaulted-females-in-washington-womens-prison-former-inmate-claims/>

² Nazia Parveen, [Karen White: how 'manipulative' transgender inmate attacked again](https://www.theguardian.com/society/2018/oct/11/karen-white-how-manipulative-and-controlling-offender-attacked-again-transgender-prison), The Guardian (Oct. 11, 2018, 12:30 PM), <https://www.theguardian.com/society/2018/oct/11/karen-white-how-manipulative-and-controlling-offender-attacked-again-transgender-prison>

deeply dangerous ideology that harms not only women, but anyone who suffers from gender dysphoria because it sanctions their misbeliefs rather than providing them with the medical help they need. The state of Maryland should reject this ideology expressed in S.B. 550 and instead seek to protect female inmates and facilitate mental healthcare for inmates suffering from gender dysphoria.

Second, Sections 9-619(D) and 9-620(B) of the bill require Maryland correctional facility employees to refer to inmates by their chosen pronouns and honorifics. The Supreme Court has historically recognized government compelled speech as an illegal First Amendment violation.³ The First Amendment does not guarantee that a citizen has a right to be called by whichever gender pronouns they prefer, but it does protect citizens from being forced by the government, usually in violation of their consciences and sincerely held ethical or religious beliefs, to call someone by a pronoun inconsistent with that person's biology or appearance.

Federal Courts are already recognizing and enforcing this doctrine as applied to gender pronouns. In April 2021, the Sixth Circuit of Appeals ruled that state governments cannot compel state employees to use preferred gender pronouns in the course of their employment duties. The Sixth Circuit also ruled that such compelled speech would violate the employees' religious freedom because of the belief that sex is fixed from the moment of conception. Therefore, the Sixth Circuit ruled that the state cannot compel state employees to violate those sincerely held religious beliefs by making statements they believe are false.⁴ If passed, S.B. 550 would present the same set of legal challenges and is almost certainly to be ruled an unconstitutional violation of Maryland correctional facility employees' free speech and religious freedom rights.

In conclusion, S.B. 550 is an ill-advised piece of legislation that, if passed, will severely endanger female inmates and inmates afflicted with gender dysphoria; it will also trample upon the First Amendment rights of Maryland correctional facility employees. By rejecting this bill, Maryland will demonstrate that it protects women, values mental healthcare, and cherishes the Constitutional rights of its employees.

Therefore, we strongly urge you to reject S.B. 550.

³ *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

⁴ *Meriwether v. Hartop*, 992 F.3d 492 (6th Cir. 2021).

Sincerely,

Joseph Kohm III, Esq.
Director, Public Policy
Family Policy Alliance